

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DANIEL HOPPER,

Plaintiff,

V.

COMMISSIONER DORIS MEISNER
AND TWO JOHN DOES.

Defendants.

Case No. C06-5057 FDB

ORDER ADOPTING
REPORT AND
RECOMMENDATION AND
DISMISSING ACTION
WITHOUT PREJUDICE

The Magistrate Judge recommends that this civil rights action be dismissed without prejudice as the sole claim for relief is by writ of habeas corpus. As detailed by the Magistrate Judge, the Plaintiff's action is intertwined with the facts of his current deportation proceedings to the extent that going forward with this action would call into question the propriety of Plaintiff's current detainment. A challenge that necessarily implies the invalidity of confinement must be brought as a petition for a writ of habeas corpus, and not as a 42 U.S.C. § 1983 action. See, Butterfield v. Bail, 120 F.3d 1023 (9th Cir. 1997).

Plaintiff has failed objections asserting that his civil rights action does not implicate the validity of the judgment or continuing confinement and his action is not confined to the writ of habeas corpus. The Court is unpersuaded by Plaintiff's arguments.

The Court, having reviewed Plaintiffs' complaint, the Report and Recommendation of Magistrate Judge J. Kelley Arnold, the objections to the Report and Recommendation, and the

1 remaining record, does hereby find and ORDER:

2 (1) The Court adopts the Report and Recommendation;

3 (2) This action is **DISMISSED WITHOUT PREJUDICE**;

4 (3) Clerk is directed to send copies of this Order to plaintiff, and to the Hon. J. Kelley
5 Arnold.

6 DATED this 9th day of June, 2006.

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11 FRANKLIN D. BURGESS
12 UNITED STATES DISTRICT JUDGE
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